

MINUTES OF THE MEETING OF THE NATURAL RESOURCES COMMITTEE
FEBRUARY 9, 1981 HOUSE

The House Natural Resources Committee convened in Room 104 of the Capitol Building on Monday, February 9, 1981, at 12:30 p.m. with CHAIRMAN DENNIS IVERSON presiding and eighteen members present.

CHAIRMAN IVERSON opened the hearing on HB 533.

HOUSE BILL 533 REP. HERB HUENNEKENS, sponsor, presented the bill which would remove the requirement that the value of state-owned coal be defined as the value before taxes for royalty purposes. He said this bill is not complicated and deals with state coal leases.

REP. HUENNEKENS then presented DAVID WOODGERD of the Department of State Lands who testified as a proponent. See Exhibit 1. MR. WOODGERD stated that this will not change the amount the state receives but rather the manner in which it is calculated.

There were no OPPONENTS.

REP. HUENNEKENS closed on the bill.

During questions from the committee, REP. NORDTVEDT asked why change if it just involves bookkeeping. MR. WOODGERD stated that we could better determine how much the state is getting. It appears we are getting a higher royalty when in fact we are not.

REP. SALES said nothing shows how much the state makes and that the people make less. REP. HUENNEKENS stated that the point is that the state is required to get maximum value. This is using the same figures as when the public is involved.

The hearing on HB 533 closed and the hearing on HJR 13 opened.

HOUSE JOINT RESOLUTION 13 REP. BURT HURWITZ, chief sponsor, presented the resolution which would support actions by other western states to gain control of certain public lands within the states' boundaries. He felt Montana lands can be better managed by people in Montana. We want to be consulted about the management of our lands.

REP. REX MANUEL, another sponsor, stated that a resolution is a message to Congress voicing opinions. This one would tell Congress that we do not like what is happening to our grazing lands.

REP. HAROLD BRIGGS gave a brief overview of how certain lands became federally controlled. There are currently about 16 million acres of forest lands and about 8 million acres of BLM land. The total revenue in Montana on federal lands is about 19 million dollars and on state lands about 11 million dollars.

The expenditures by the federal government are higher than by the state also. BLM employs 49 people for one million acres while the state employs 11 for the same acreage. Federal lands did not return as much as state lands return. The state received \$3.82 for every acre leased while the federal government receives \$6.10 per acre.

REP. BOB SIVERTSEN spoke in favor of the resolution. The administrative procedures have been left up to the states involved. Sometimes seems to be more of an employment program than a good use of the land. The federal government is also buying land with no real purpose in mind as to use. He felt the rights of individuals are not being considered.

REP. MANUEL presented some amendments for HJR 13 shown in Exhibit 2. He felt the concept of "shared management" would be better for the local concerns.

MONS TEIGEN, representing the Montana Livestock Association, felt the resolution was a step in the right direction.

BOB GILBERT, Montana Woolgrowers, supported the resolution, as did JANELLE FALLAN of the Montana Chamber of Commerce.

Speaking as an opponent was WILBUR REHMAIN of the Montana Wildlife Association who said he could understand the frustration of the people dealing with the federal agencies. He feels this resolution is more than just a message to Washington. He felt if some amendments were made to include the words "multi-use" or "multiple use", the resolution would be less objectionable to them. If HJR 13 is an effort to take over state lands, they oppose it.

MIKE MALES, E. I. C. representative, was concerned because no one knows what the Sagebrush Rebellion will cost the state nor do we know what the state can do that the federal government cannot. He felt a comprehensive study is necessary before the act is accepted.

NOLL ROSETTA of the Montana Audobon Society opposed the resolution because he felt it would lead to the sale of public lands to individuals.

OSCAR PEDERSON of Great Falls, speaking as a private citizen, opposed the resolution.

REP. HERB HUENNEKENS opposed the resolution. He stated that small buyers will not be able to buy lands if it goes from the state to private owners. Half the population of Montana is urban and the public lands are needed for recreational purposes.

Natural Resources
February 9, 1981
Page 3

REP. VERNER BERTELSEN said he is concerned about what the state is getting into. We started out trying to get the attention of the bureaucrats but have gone beyond that.

REP. MANUEL closed on HJR 13.

During questions from the committee, REP. NORDTVEDT asked each side if they could give examples of land side by side and show which is doing better? The answer was the land is similar.

REP. ROTH asked where in the resolution it says the state will sell to private individuals. MR. MALES said it does not speak to that issue; therefore, it is implied.

REP. NEUMAN asked what the cost is per animal unit on each type of land. The answer was one dollar more on federal land than on state.

REP. ABRAMS asked whether or not land was leased by the acre rather than by animal unit. MR. TEIGEN replied that state land is leased on the basis of competitive bidding.

REP. ROTH asked if there was any reason why the state would not use a good policy of management. MR. REHMAIN said maybe but it has not been addressed in the resolution.

REP. BERTELSEN asked about shared responsibility and how that would work. REP. MANUEL said he thought the BLM and the state could work together.

REP. HUENNEKENS asked if the amendments suggested didn't change the purpose of the resolution. REP. MANUEL said the intent of this resolution is to let the Department of Interior know that there is a problem.

The hearing on HJR 13 closed.

EXECUTIVE SESSION HOUSE BILL 533 Motion of DO PASS made by
REP. SHELDEN.

REP. HUENNEKENS said there would be no fiscal impact from this bill.

After much discussion about hypothetical raises in the coal tax and royalties, the vote was taken. Voting in favor were REPS. IVERSON, MUELLER, BERTELSEN, COZZENS, QUILICI, HUENNEKENS, KEEDY, SHELDEN, BROWN, NEUMAN, and HART. Opposing were REPS. BURNETT, CURTISS, SALES, NORDTVEDT, ASAY, HARP, ROTH, and ABRAMS.

A motion to RECONSIDER was then made and passed with REPS. KEEDY and BROWN opposing.

Natural Resources
February 9, 1981
Page 4

HOUSE BILL 392 REP. ASAY moved DO NOT PASS. REP. HUENNEKENS made a substitution motion to TABLE. Motion passed with REPS. ROTH, CURTISS, and BURNETT opposing.

The meeting adjourned at 2:30 p.m.

Respectfully submitted,



DENNIS IVERSON, CHAIRMAN

Ellen Engstedt, Secretary

(Scribble)

COMMITTEE

HOUSE
HJR 13

Date 2/9/81

HURWITZ

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
------	-----------	--------------	---------	-------

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

NATURAL RESOURCES

COMMITTEE

HOUSE
HB 533

2/9/81

HENDERKENS

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

TESTIMONY

HB 533

This bill concerns the manner in which the state must calculate its royalty when it leases land for coal mining. Pursuant to section 15-35-109 MCA the state is required to calculate its royalty in a different manner than other coal owners. A private or federal coal mining lease normally provides for a royalty which is a certain percentage such as 12½% of the coal contract price. The coal contract price is the price paid the mining company for the coal when it is loaded on the train at the mine site.

The language which this bill would repeal requires that the state calculate its royalty on the price as defined in section 15-35-102 MCA which is the coal contract price minus taxes. A copy of this definition as it appears in section 15-35-102 MCA is attached. As an example, the contract price the mining company receives for the coal may be \$10.00 per ton but \$3.00 of this price may be taxes on production which the company is passing through to the purchaser. Therefore, the state would be required to subtract \$3.00 from contract price before calculating its royalty. A 12½% royalty on \$10.00 coal is considerably more money than a 12½% royalty on \$7.00 coal.

In a recent coal mining lease issued to Western Energy Company the state required an 18% royalty in order to compensate for this problem. An 18% royalty on coal valued at \$7.00 is approximately equal to a 12½% royalty on coal valued at \$10.00. A copy of the royalty provision in the Western Energy Company lease is attached.

The department would like to change the requirement that taxes be subtracted from the contract price of the coal before the royalty is calculated as the present language causes confusion and makes it difficult to determine whether the state is receiving full market value for its coal. Also, since the state has to charge a higher royalty than other coal owners it appears that the state is forcing up the market value of coal, when in reality it is leasing at the market value.

STATE OF MONTANA COAL LEASE

Lease No. C1063-80

This indenture of lease made and entered into between the State of Montana, by and through its lawfully qualified and acting State Board of Land Commissioners, hereinafter referred to as lessor, and the person, company or corporation herein named, hereinafter referred to as lessee, under and pursuant to the terms and provisions of Title 77, Chapter 3, Part 3, MCA (Title 81, Chapter 5, Revised Codes of Montana, 1947), all acts amendatory thereof and supplementary thereto, and all rules and regulations adopted pursuant thereto,

WITNESSETH,

The lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth, does hereby grant and lease to the lessee, for the purpose of mining and disposing of coal and constructing all such works, buildings, plants, structures and appliances as may be necessary and convenient to produce, save, care for, dispose of and remove said coal, all the lands herein described, as follows:

Date this lease takes effect: May 8, 1980.

Name of lessee: Western Energy Company.

Address of lessee: 404 N. 31st, Billings, Montana 59101.

Land located in Rosebud County.

Description of land: Township 2 North, Range 40 East
Section 36: SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$

Total number of acres: 170, more or less, belonging to School Grant.

Annual rental: \$25.05 per acre for the first year of the lease and \$3.00 per acre per year for each succeeding year of the primary term of ten years.

Royalties: At a rate of 18 percent of the value of the coal as defined herein. An advance royalty of \$50,000.00 shall be due following the third year and every year thereafter until production begins. Advance royalties shall be credited against production royalties. (It is important to note that 18% royalty on the value of coal as defined in this lease is equivalent to a 12 $\frac{1}{2}$ % royalty on the value of coal as normally defined to include taxes paid on production.)

This lease is granted for a primary term of ten years and so long thereafter as coal in commercial quantities shall be produced from the land, subject to all of the terms and conditions herein set forth; however, if at the end of the primary term the land described in this lease is also described in a strip mine permit issued under section 82-4-221 MCA or in a mine site location permit under section 82-4-122 MCA, this lease shall not be terminated for non-production so long as

- (a) coal is the only mineral which can supply energy while being easily found in abundance in Montana;
 - (b) coal is the only mineral which is so often marketed through sales contracts of many years' duration;
 - (c) coal, unlike most minerals, varies widely in composition and consequent value when marketed;
 - (d) coal in Montana is subject to regional and national demands for development which could affect the economy and environment of a larger portion of the state than any other mineral development has done;
 - (e) coal in Montana, when subbituminous and recoverable by strip mining, is in sufficient demand that at least one-third of the price it commands at the mine may go to the economic rents of royalties and production taxes;
 - (f) coal in the lignite form is in less demand and producers of lignite are able to pay lesser amounts of royalty and production tax than producers of subbituminous can pay;
 - (g) coal produced in underground mines has higher production costs and underground producers are able to pay lesser amounts of royalty and production tax than strip-mine producers can pay;
 - (h) coal production in Montana has been subject to an uncoordinated array of taxes which overlap one another and yield revenue in an inconsistent and unpredictable manner.
- (2) The legislature declares that the purposes of this chapter are to:
- (a) allow the severance taxes on coal production to remain a constant percentage of the price of coal;
 - (b) stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;
 - (c) simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections; and
 - (d) accomplish the foregoing purposes by establishing categories of taxation which recognize the unique character of coal as well as the variations found within the coal industry.

History: En. 84-1312 by Sec. 1, Ch. 525, L. 1975; R.C.M. 1947, 84-1312.

15-35-102. Definitions. As used in this chapter, the following definitions apply:

- (1) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107.
- (2) "Department" means the department of revenue.
- (3) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.
- (4) "Produced" means severed from the earth.
- (5) "Strip mining" or "surface mining" is defined in 82-4-203.
- (6) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any

AMENDMENTS TO HJR 13

1. Page 1, line 13.
Strike: "as agent of the states"
2. Page 1, line 14.
Following: "the"
Strike: "attempted"
3. Page 1, lines 20 and 21.
Following: "Union"
Strike: the remainder of line 20 through "void" on line 21
Insert: "has created management problems"
4. Page 1, line 24 through page 2, line 2.
Strike: line 24 on page 1 through line 2 on page 2 in their entirety
Insert: "WHEREAS, land ownership and management should have as its primary objectives the best long-term use of the resources, incorporating economic, social, and environmental considerations; and"
5. Page 2, line 4.
Following: "increasingly"
Strike: "restrictive"
Insert: "paternalistic"
6. Page 2, line 8 through line 15.
Strike: line 8 through line 15 in their entirety
Insert: "WHEREAS, at the same time the development of public land resources is increasingly complicated and burdensome, national energy demands require that those resources of the West, including fossil fuels and geothermal, be developed in an orderly and environmentally sound manner to gain energy independence; and
WHEREAS, the insensitivity of many federal bureaucrats toward local issues and problems has created a condition of conflict and confrontation; and"
7. Page 2, line 17.
Following: "being"
Strike: "dictated from"
Insert: "shaped in"
8. Page 2, line 19 through line 24.
Strike: line 19 through line 24 in their entirety
Insert: "WHEREAS, responsible administration of the public lands will allow responsible development of energy and mineral resources."

AMENDMENTS TO HJR 13
(continued)

9. Page 3, lines 4 and 5.

Following: "states"

Strike: ", known as the "Sagebrush Rebellion", to gain"

Insert: "to share in the administration of public lands within
their borders; thereby restoring"

10. Page 3, line 6.

Following: "Constitution"

Insert: "of the United States"

11. Page 3, line 10 through line 12.

Following: "if"

Strike: the remainder of line 10 through line 12 in their entirety

Insert: "management of the public lands is a responsibility shared
by state and federal government;"

12. Page 3, line 13 through line 17.

Strike: line 13 through line 17 in their entirety

Renumber: subsequent subsections

HOUSE JOINT RESOLUTION NO. 13

INTRODUCED BY _____

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES
OF THE STATE OF MONTANA SUPPORTING ACTIONS BY WESTERN STATES TO
GAIN CONTROL OF CERTAIN PUBLIC LANDS WITHIN THEIR BOUNDARIES.

WHEREAS, the intent of the framers of the constitution of
the United States was to guarantee to each of the states sover-
eignty over matters within its boundaries except for those
powers specifically reserved to the United States; and

WHEREAS, the imposition upon the state of Montana by the
Congress of the United States of a requirement in the Statehood
Act that the state of Montana and its people "disclaim all right
and title to the unappropriated public lands lying within (its)
boundaries" as a condition precedent to acceptance of Montana
into the Union has created management problems; and

WHEREAS, of all the land controlled by the federal govern-
ment, over 90% is located in 13 western states; and

WHEREAS, land ownership and management should have as its
primary objectives, the best long-term use of the resources,
incorporating economic, social ^{and} & environmental considerations;
and

WHEREAS, federal land policies affecting the West have become increasingly paternalistic in this century, culminating with the Federal Land Policy and Management Act of 1976, which, among other things, declared Congress' intent to hold the public lands in federal control in perpetuity; and

WHEREAS, at the same time the development of public land resources is increasingly complicated and burdensome, national energy demands require that those resources of the West, including fossil fuels and geothermal, be developed in an orderly and environmentally sound manner to gain energy independence; and

WHEREAS, the insensitivity of many federal bureaucrats toward local issues and problems has created a condition of conflict and confrontation; and

WHEREAS, the future development of the communities and the economies of the western states is being shaped in Washington, D.C.; and

WHEREAS, responsible administration of the public lands will allow responsible development of energy and mineral resources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That this Legislature endorses and supports the efforts of the western states to share in the administration of public lands within their borders; thereby restoring the equality guaranteed to all states in the Constitution of the United States;

(2) That it is in the national interest that the resources

of the West be responsibly developed and that such development will be most efficient, responsive to local communities, and environmentally responsible if management of the public lands is a responsibility shared by state and federal government;

(3) That a copy of this resolution be transmitted by the Secretary of State to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives of the United States, and to each member of the Congress of the United States; and

(5) That a copy of this resolution be sent by the Secretary of State to the presiding officers of the Legislatures of the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

-End-